MONTANA LEGISLATIVE HISTORY

Chapter 176 1999

Bill H 474 S _____ Original bill & history ✓C

H. Committee on State Admin			S. Committee on State Admin		
Hearing Date(s)	2-10	✓C	Hearing Date(s)	3-10	✓C
	_____	___C		_____	___C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	_____	___C			

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

HB 474 Introduced by Hibbard, et al. *LC0909 Drafter: Maly*

Allow the Public Employer Representative to Petition Board of Personnel Appeals to Redetermine the Appropriate Unit for Collective Bargaining in the Event That a State Agency or Facility of a State Agency Undergoes Significant Reorganization;...

2/03	Introduced and 1st Reading		
2/03	Referred to State Administration		
2/10	Hearing		
2/10	Committee Executive Action--Bill Passed	15	2
2/11	Committee Report--Bill Passed		
2/13	2nd Reading Passed	91	8
2/15	3rd Reading Passed	91	9
	Transmitted to Senate		
2/22	Referred to State Administration		
3/10	Hearing		
3/11	Committee Executive Action--Bill Concurred	5	0
3/11	Committee Report--Bill Concurred		
3/13	2nd Reading Concurred	43	0
3/15	3rd Reading Concurred	49	0
	Returned to House		
3/16	Sent to Enrolling		
3/16	Returned from Enrolling		
3/17	Signed by Speaker		
3/17	Signed by President		
3/18	Transmitted to Governor		
3/25	Signed by Governor		
3/27	Chapter Number Assigned		
	Chapter Number 176		
	Effective Date: 3/25/1999 - All Sections		

HB 475 Introduced by Wyatt *LC1327 Drafter: Petesch*

Generally Revise Laws Relating to the Issuance of Bonds to Conform to the Provisions of Article VIII, Section 17, of the Montana Constitution;...

By Request of Joint Select Committee on CI-75

2/03	Introduced and 1st Reading
2/03	Referred to Appropriations
2/03	Fiscal Note Requested
2/06	Fiscal Note Received
2/06	Fiscal Note Printed
2/10	Hearing
2/17	Tabled in Committee
	Died in Standing Committee

HB 476 Introduced by R. Johnson, et al. *LC1725 Drafter: Petesch*

Provide for the Issuance of Municipal General Obligations;...

1/22	Fiscal Note Needed
2/03	Introduced and 1st Reading
2/03	Referred to Local Government
2/03	Fiscal Note Requested

HOUSE BILL NO. 474

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE PUBLIC EMPLOYER REPRESENTATIVE TO PETITION BOARD OF PERSONNEL APPEALS TO REDETERMINE THE APPROPRIATE UNIT FOR COLLECTIVE BARGAINING IN THE EVENT THAT A STATE AGENCY OR FACILITY OF A STATE AGENCY UNDERGOES SIGNIFICANT REORGANIZATION; PROHIBITING THE BOARD FROM DESIGNATING A FORMERLY UNDESIGNATED LABOR ORGANIZATION AS THE EXCLUSIVE BARGAINING AGENT IN THE ABSENCE OF A PETITION FOR DESIGNATION; AMENDING SECTION 39-31-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-31-202, MCA, is amended to read:

"39-31-202. Board to determine appropriate bargaining unit -- factors to be considered. (1) In order to ~~assure~~ ensure employees the fullest freedom in exercising the rights guaranteed by this chapter, the board or an agent of the board shall decide the unit appropriate for the purpose of collective bargaining and shall consider such factors as community of interest, wages, hours, fringe benefits, and other working conditions of the employees involved, the history of collective bargaining, common supervision, common personnel policies, extent of integration of work functions and interchange among employees affected, and the desires of the employees.

(2) If a state agency or facility of a state agency is reorganized to the extent that the reorganization results in substantial changes to the factors listed in subsection (1), the public employer representative, as provided in 39-31-301, may petition the board to make a new determination of the appropriate unit for the purpose of collective bargaining. In making this determination, the board shall take into account the consequences of the reorganization on each position in the affected agency or facility.

(3) Unless the board has received a petition, as provided in 39-31-207, to consider a collective bargaining unit that was not designated as an appropriate unit prior to the reorganization described in subsection (2), the board may not consider any labor organization that was not designated to represent employees of the affected agency or facility at the time that the reorganization became effective."

INTRODUCED BILL
HB 474

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN MATT BRAINARD**, on February 10, 1999 at 8:00 A.M., in Room 420 Capitol.

ROLL CALL

Members Present:

Rep. Matt Brainard, Chairman (R)
Rep. Toni Hagener, Vice Chairman (D)
Rep. Allan Walters, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Joan Andersen (R)
Rep. Edith Clark (R)
Rep. Tom Dell (D)
Rep. George Golie (D)
Rep. Donald L. Hedges (R)
Rep. Monica Lindeen (D)
Rep. Douglas Mood (R)
Rep. Brennan Ryan (D)
Rep. Frank Smith (D)
Rep. Bill Tash (R)
Rep. Bill Thomas (R)
Rep. Doug Wagner (R)

Members Excused: Rep. Jeff Mangan (D)

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Karen Mills, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s): HB 445, 446, 474, 471,
Executive Action: 474, 182,; Tabled: HB 471, 446, 445, 148
Dates Posted: 445, 446, 2/5; 474, 471, 12/5

Proponents' Testimony:

JOE KERWIN, Deputy Sec. of State for Elections
{Tape : 1; Side : B; Approx. Time Counter : 26.1 - 29.4}

DEBBIE SMITH, Written Testimony EXHIBIT(5)

Opponents' Testimony:

ROBERT THROSSEL, Mt. Assoc. of Clerk and Recorders
{Tape : 1; Side : B; Approx. Time Counter : 29.5 - 31}

Questions from Committee Members and Responses:
{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 17.9}

Closing by Sponsor: REP. CAROL JUNEAU
{Tape : 2; Side : A; Approx. Time Counter : 18 - 18.9}

HEARING ON HB 474

Opening Statement by Sponsor: REP. CHASE HIBBARD
{Tape : 2; Side : A; Approx. Time Counter : 18.9 - 20}

Proponents' Testimony:

JOHN MCEWAN, Administrator State Personnel Div. EXHIBIT(6)
{Tape :2; Side :A; Approx. Time Counter : 20.6 - 26.7}

TOM SCHNEIDER, Public Employees Assoc., Mt.
{Tape :2; Side :A; Approx. Time Counter : 26.8 - 29.9}

TERRY MINNOW, MEA/FTA
{Tape :2; Side :A; Approx. Time Counter : 29.9 - 32}

DAN ANDERSON, Dept. of Public Health

Opponents' Testimony: None

Informational Testimony:

JOHN ANDREW, Dept. of Labor and Industry
{Tape : 2; Side : B; Approx. Time Counter :3.2 - 3.7}

Questions from Committee Members and Responses:
{Tape : 2; Side : B; Approx. Time Counter : 4.1 - 7.5}

Closing by Sponsor: REP. CHASE HIBBARD
{Tape : 2; Side : B; Approx. Time Counter : 7.6 - 8.6}

HEARING ON HB 471

Opening Statement by Sponsor: REP. MATT BRAINARD-SUB SPONSOR for REP. JOHN COBB
{Tape : 2; Side : B; Approx. Time Counter : 9.5 - 12.3}

Proponents' Testimony: None

Opponents' Testimony:

DEBBIE SMITH, Mt. Common Cause
{Tape : 2; Side : B; Approx. Time Counter : 12.5 - 17.9}

Questions from Committee Members and Responses:
{Tape : 2; Side : B; Approx. Time Counter : 18.2 - 25}

Closing by Sponsor: REP. MATT BRAINARD-SUB SPONSOR FOR REP. JOHN COBB
{Tape : 2; Side : B; Approx. Time Counter : 25.1 - 28.1}

EXECUTIVE ACTION ON HB 471

Motion: REP. HAGENER moved HB 471 DO PASS
{Tape : 2; Side : B; Approx. Time Counter : 28.5 - 28.8}

Discussion:
{Tape : 2; Side : B; Approx. Time Counter : 29 - 29.7}

Motion/Vote: REP. WAGNER moved to Table HB 471. The motion carried unanimously 17-0.
{Tape : 2; Side : B; Approx. Time Counter : 29.7 - 32}

EXECUTIVE ACTION ON HB 474

Motion: REP. GOLIE moved HB 474 DO PASS
{Tape : 3; Side : A; Approx. Time Counter : 0.1 - 0.6}

Discussion:
{Tape : 3; Side : A; Approx. Time Counter : 0.7 - 4.1}

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN MACK COLE**, on March 10, 1999 at 10:00 A.M., in Room 331 Capitol.

ROLL CALL

Members Present:
Sen. Mack Cole, Chairman (R)
Sen. Don Hargrove, Vice Chairman (R)
Sen. Jon Tester (D)
Sen. Jack Wells (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Keri Burkhardt, Committee Secretary
David Niss, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 468, HB 474, 2/22/1999; HB 469, HB 508, 2/23/1999
Executive Action: HB 468, HB 474

HEARING ON HB 468

Sponsor: **REP. MATT BRAINARD, HD 62, MISSOULA**

Proponents: **Verner Bertelsen, Montana Senior Citizens' Association.**

Opponents: None

Information: **Mark Mackin**

are taking your sign down, they are breaking the law. If you are involved in the kind of campaign where suddenly someone is helping the opposition, this will give you some protection. This gives you course of action and it is going to help.

Closing by Sponsor:

REP. BRAINARD stated I think this is a good bill. We may gain productivity. It was not designed for that, but it is something that would be a side issue. I hope you will concur in it.

HEARING ON HB 474

Sponsor: **REP. CHASE HIBBARD, HD 54, HELENA**

Proponents: **John McEwen, State Personnel Administrator, Department of Administration**
Terry Minow, Montana Federation of Teachers, Montana Federation of Public Employees, Montana Public Employees' Association
Dan Anderson, Addictive and Mental Disorders Division, Department of Health and Human Services

Opponents: None

Information: **John Andrew, Chief of Labor Standards Bureau, Department of Labor and Industry**

Opening Statement by Sponsor:

REP. CHASE HIBBARD, HD 54, HELENA, said I was asked to carry this bill by the Department of Administration on behalf of other state agencies, in order to get statutory direction on collective bargaining issues that arise during major state reorganization. The bill is a result of problems which occurred the 1995 reorganization. The main problem is when two or more unions claim to represent employees doing similar work in the same work units. Without the statutory changes requested by this bill and if the problems that are inevitable are not able to be solved informally, the state faces liability in the way bargaining units might be formed in a way that has not been deemed appropriate by the Board of Personnel Appeals and the employees affected have not been given the right to choose their bargaining union.

This legislation will allow the Board of Personnel Appeals, upon petition from the state, to assist the state in determining which unions represent which employee groups once major reorganization has occurred. This issue came up and was able to be resolved on

an informal basis, but it was a very tenuous problem. There was no statute to backup what was able to be done to everyone's benefit. This will clear that up and put into statute a solution to the problem. Quite a bit of negotiation went on beforehand. The Department of Administration negotiated with the two unions, which represent the vast majority of the affected parties and there is mutual agreement that this is a good solution.

Proponents' Testimony:

John McEwen, State Personnel Administrator, Department of Administration, stated we see some reorganizations on the horizon and we feel this bill will give us the tools we need to help us through some representation issues. He handed out **EXHIBIT(1).** I want to describe the bargaining unit determination plan contained in statute and rule. It is the determination of the bargaining unit that is a threshold issue which is disruptive in reorganizations. Line 15 of the bill talks about characteristics of bargaining units. The Board of Personnel Appeals considers factors such as wages, conditions, supervision, etc., in determining whether a group of employees are in corporate unit for bargaining. After that unit determination is made, there is an election. There can be more than one union in the election. There can be the union that petitioned for the union as well as intervener unions. A union can be an intervener as long as they have 10 percent of the card signed by employees in question. Finally, once there is an election and the unit is formed, the state has an obligation to bargain exclusively with that bargaining agent.

The examples referenced by **REP. HIBBARD** involved the 1995 reorganizations. We had a new group of employees and two competing unions, all working in the same unit under the same supervisory structure. In a second example, we had only one set of employees unionized; the other employees were not represented. If we recognized a union in either situation, we could have been charged with an Unfair Labor Practice. Our state law says it is an Unfair Labor Practice for a public employer to dominate, interfere, or assist in the formation or administration of a labor organization. If we withdrew recognition in these situations we would disrupt labor management relations, temporarily deny the employees the right to bargain, and cause economic hardships on the unions themselves because of temporary loss of dues. We were left to resolve these representation issues without any statutory direction.

The Board of Personnel Appeals agreed to assist us. We had a new determination of bargaining units appropriate to new agencies. We did not disrupt agency operations and we maintained the employees right to choose the bargaining agent. Fortunately we

were able to do so without any challenges from employees or other unions. We expect the same problems within the next few months with some reorganizations in the Department of Revenue and at the State Hospital. In Line 27 of the bill, there is one aspect different than the process we employed in 1995. We have included the requirement that the question of representation be limited to bargaining agents representing employees prior to the reorganization.

The elections conducted in 1995 allow for an intervener process similar to that in establishing new units. This provision of the bill is intended to protect labor unions from intervention by other unions who would not otherwise have been present except for the employees' and employers' reorganization. We have not eliminated or restricted employee rights to choose a different bargaining agent. There is some precedent to this statutory direction. In 1987 there was some language directing how representation issues would be handled.
{Tape : 1; Side : B; Approx. Time Counter : 65 - 83}

Terry Minow, Montana Federation of Teachers and State Employees, Montana Education Association, Montana Public Employees' Association, stated we support this bill. This bill is a result of a process of discussions and negotiations between our unions, other unions, and the Department of Administration. A similar process was used to decide the appropriate bargaining agents in the situation that occurred in 1995. We feel the involvement with the Board of Personnel Appeals is valuable. This bill puts that process into statute. As you heard, we are facing a difficult situation with the downsizing of Montana State Hospital. There will be over 100 layoffs. There will be approximately 14 unions representing employees at Montana State Hospital. Job duties will change and we feel this bill will help us get through that difficult situation and appropriately determine the bargaining units. We are also facing a situation in the Department of Revenue with reorganization. This bill would be very helpful in that situation as well.

Dan Anderson, Addictive and Mental Disorders Division, Department of Health and Human Services, said as you have already heard, our department has an interest in this bill because of a very substantial reorganization and downsizing of Montana State Hospital. Currently, the State Hospital has 13 separate bargaining units. Many of those units have fewer than fifteen members. Once we go through the downsizing, a number of those units will have only one member. As we are changing things at the State Hospital, we are moving towards operating a much smaller, more efficient facility where staff of various types work together closely to get the patient needs taken care of. We need a neutral third party to help us and the employee bargaining

units at the State Hospital go through this process and set up a bargaining unit structure that makes sense for the employees and for the Department. We support this bill and urge your support.

Informational Testimony:

John Andrew, Chief of Labor Standards Bureau, Department of Labor and Industry, stated one of my functions is to assist in staffing the Board of Personnel Appeals. We are the third party neutral working with labor and management on all the matters involving the Collective Bargaining Act. In the past the legislature gave some guidance when the Vo-Techs were reorganized. We are viewing this as another tool to aid us in assisting labor and management and bring about friendly agreements and good resolutions to these types of situations.

Questions from Committee Members and Responses:

SEN. HARGROVE said the bottom of the first page says, "the Board may not consider any labor organization that is not designated to represent employees of the affected agency or facility at the time the reorganization became effective". It seems to me there might be times when that could be appropriate or could happen. Would you discuss that? Is it possible for that to be the appropriate thing to do and if it were done, would it be a bad thing? **Mr. Andrew** replied there are a couple issues in there. We did some research into the Federal Labor Law and found that in the case of reorganizations, the National Labor Relations Board uses a process similar to what is in this bill. The state law is mirrored after the federal law, so we believe there is good precedence for going this way. There is also a special provision, a "window period", that opens in any contract lifetime. A window period makes some allowance for other labor organizations to intervene if that window is open and things are not otherwise resolved. The concerns out there are accommodated quite well in this bill.

Closing by Sponsor:

REP. HIBBARD said I think everyone has done a good job explaining what this bill does. It puts into statute things that will be beneficial not only to management, but to the employees involved as well. I think this is a win-win for all. It eliminates liability to the state and the court's protection for those bargaining units. I hope you will give this favorable consideration.

prohibits signs on the right-of-way and allows them to be taken down by the Department without notice to the owner.

SEN. TESTER said I have a problem with changing the days based on a production reason. It is a poor reason. In response to the comment made about trying to hold the Executive Branch accountable, I can see many things we do as a legislature that lets the Executive Branch off the hook on many things. If we are worried about productivity the day before Christmas, and it probably is down, we need to hold them accountable. I don't think we need to change the rules to accommodate the Governor.

SEN. WELLS stated I don't think the sponsor of the bill selected that day because it was a nonproductive day. I think he needed to trade them a day so he doesn't have grand opposition and look like he is hammering on state employees. Therefore, he decided the day before Christmas is a good day and it is probably a lower productive day. He is not doing it to take care of the production problem.

SEN. TESTER said if that is not the case, this Fiscal Note has to be way off. I don't believe $64,795 would pay the salaries for all the people in state government for one day. That is the equivalent of two people for a year. There are far more than that number of man days in State Government. My assumption was that they got the $64,795 because production was so poor on the day before Christmas, they could justify that figure. I bet that figure is well over a million dollars.

SEN. COLE said when you look at assumption one on the Fiscal Note, they are only talking about holiday pay.

SEN. TESTER stated they are adding another day every other year.

SEN. COLE said I think they got the figure by multiplying 14.95 dollars by 6,000 hours.

SEN. WELLS stated I wonder if they subtracted all the people who generally take that off as a leave day.

SEN. TESTER said I am going to do some checking on that.

EXECUTIVE ACTION ON HB 474

{Tape : 2; Side : A; Approx. Time Counter : 123 - 130}

Motion/Vote: **SEN. HARGROVE** moved that **HB 474 BE CONCURRED IN.** **Motion carried 5-0.**